

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DARLINGTON AMADASU,

: Case No. 1:01CV182

Plaintiff,

: Judge S. Arthur Spiegel
: Magistrate Judge Timothy S. Black

v.

MERCY FRANCISCAN HOSPITAL, et al.,

Defendants.

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**JOINT RESPONSE OF
DEFENDANTS IN OPPOSITION TO
PLAINTIFF'S MOTION TO STAY
RESPONSE TO DEFENDANTS'
MOTION TO STRIKE.
*(IMMEDIATE ORAL ARGUMENT
HEREBY REQUESTED)***
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Defendants Ravi B. Berry, M.D. ("Dr. Berry"), Mercy Franciscan Hospital - Western Hills, Mercy Franciscan Hospital - Mt. Airy, Steven Grinnell, Charles Lobeck, June Bronhert, n/k/a/ Gatzke, Judy Daleiden, Connie McCoy and Jane(s) Doe(s) Nurses (collectively, "the Mercy Defendants") (together, "Defendants") respectfully request that this Court deny Plaintiff Darlington Amadasu's ("Amadasu") motion to stay his response to Defendants' joint motion to strike his supplemental disclosure of expert and lay witnesses. In addition, Defendants respectfully request that this Court schedule this matter for an immediate oral argument.

Rather than file a substantive response to Defendants' motion, Amadasu has again filed a motion to stay his response pending completion of all discovery. Amadasu has simply incorporated the arguments from his previous motion to stay and offers no new facts or information to cure the deficiencies in those arguments. As explained in Defendants' joint reply¹ to Amadasu's previous motion to stay², which is incorporated herein by reference, Amadasu

¹ Docket No. 63.

² Docket No. 61.

fundamentally misunderstands the purpose and application of Rule 56(f). Once again, Amadasu fails to explain why more discovery is needed or what material he hopes to uncover. General and conclusory statements, like those made by Amadasu, do not meet the requirements of Rule 56(f).

The issue before this Court on Defendants' joint motion to strike is a legal one, not a factual one and further discovery would only serve to needlessly prolong this litigation. Amadasu failed to timely identify experts and is now improperly attempting to rely on Defendants' experts to avoid summary judgment. No additional discovery can change those facts. As such, his identification of experts should be stricken and summary judgment should be entered against him.

In addition, Amadasu's latest reply³ in support of his previous motion to stay demonstrates his continued misunderstanding of the application of Rule 56(f). Amadasu incorrectly states that "[w]hile the discovery is still ongoing motion pursuant to FRCP 56(f) would be untimely premature and may invite sanction under the inherent power of the court."⁴ Nothing in the language of the rule or in case law supports this reading. Indeed, it would be difficult, if not impossible, for Amadasu to argue that he had not had adequate time for discovery pursuant to R. 56(f), if he were allowed to file it only after the close of discovery. Such an interpretation defies logic and is clearly contrary to the intended application of summary judgment to avoid unnecessary delay and costs associated with meritless claims.

Accordingly, Amadasu's Motion to Stay should be denied and he should be ordered to respond to Defendants' Motion to Strike Amadasu's Supplemental Disclosure of Expert and Lay Witnesses immediately. Alternatively, Defendants' Motion to Strike should be granted as

³ Docket No. 68.

⁴ *Id.*, p. 1.

unopposed. Time being of the essence, Defendants' counsel can make themselves available to argue this and all other pending issues at a date and time that is convenient with the Court.

Respectfully submitted,

/s/ Deborah R. Lydon

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CERTIFICATE OF SERVICE

I certify that on October 27th, 2006 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all except Plaintiff Darlington Amadasu. I also sent the foregoing via U.S. mail to Plaintiff at the address listed below:

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/s/ Jennifer Orr Mitchell

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